

Technically speaking, the necessary and impair test should not be applied. SWBT has agreed to make the Broadband offering available to its affiliate. As such, the nondiscrimination requirements of the FTA require that the Broadband offering be made available to CLECs in a manner that is not discriminatory. SWBT's attempt to term the offering a "service" in application only has the effect of discriminating against CLECs. SWBT is attempting to instill uncertainty in CLEC business plans while its affiliate has no uncertainty because the affiliate belongs to the same corporate parent as SWBT. Consequently, no interconnection agreement between SWBT and its affiliate ASI could be approved pursuant to Section 252 if it referred to Pronto as a Broadband "Service" because the agreement would fail to meet the public interest test.

When reviewing the affect of the *UNE Remand Order*, it is important to understand in this docket what decisions this Commission has made as well as what decisions were left for future proceedings. Pronto falls most clearly under the FCC's definition of packet switching. The Commission defined "packet switching" as "the function of routing individual data units or 'packets,' based on address or other routing information contained in the packets."¹⁹ Moreover, this Commission held that even DSLAMs fell within the definition. Given that the Project Pronto offering includes DSLAM functionality, as well as an ATM switch for routing individual data units, which SBC/SWBT refers to as an Optical Concentration Device ("OCD"), Pronto clearly has the functionality of "packet switching."

The FCC determined that "[b]ecause packet switching and DSLAMs are used to provide telecommunications services, packet switching qualifies as a network element."²⁰

¹⁹ See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket NO. 96-89, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (*"UNE Remand Order"*).304.

²⁰ *Id.*

1. Violation of UNE Remand Order

SWBT is in clear violation of paragraph 313 of the *UNE Remand Order* due to its failure to provide access to its remote digital loop carrier (“DLC”) packet switch equipment (“Project Pronto”) on an unbundled basis. Although SWBT attempts to create hurdles to CLEC access that do not exist, the language of Paragraph 313 speaks for itself:

Accordingly, incumbent LECs **must** provide requesting carriers with **access to unbundled packet switching in situations** in which the incumbent has placed its **DSLAM in a remote terminal**. [Emphasis added.] Para. 313.

The incumbent will be **relieved** of this unbundling obligation **only if** it permits a **requesting carrier to collocate its DSLAM** in the incumbent’s remote terminal, **on the same terms and conditions that apply to its own DSLAM.**” [Emphasis added.] Para. 313.

First and foremost, SWBT has never petitioned this Commission or any state commission for a determination that it should be relieved from its unbundling obligation. As such, the requirement to unbundled Pronto, which is unbundled packet switching in a situation where SWBT had placed DSLAM functionality in a remote terminal, remains in effect. Therefore, SWBT’s refusal to unbundled Pronto is therefore a clear violation of the *UNE Remand Order*.

Second, on a substantive level, it is uncontroverted from the record in this proceeding and the *Merger Condition Modification Order* that CLEC DSLAMs will not operate pursuant to the same terms and conditions as SWBT’s equipment. SWBT’s equipment is hardwired to copper. On the other hand, CLECs will be required to suffer increased costs, delay, and uncertainty by being required to order what SWBT calls an engineering control splice (“ECS”). And, even

then, SWBT only will provide ECS on a case-by-case basis. SWBT's equipment shares the economies of the ILEC's network because the equipment deployed is mostly used to provide plain old telephone service ("POTS"). Third, collocation space will not be available for any remote terminal cabinet deployed prior to September 15, 2000.

Instead of complying with the FCC's orders, SWBT has been building roadblocks along the way to delay competition with its advanced services affiliate and to its wholesale broadband service. The *UNE Remand Order* is clear; SWBT has the burden of seeking relief from this unbundling requirement. Not only has it not done so, it inappropriately burdens CLECs with having to repeatedly respond to SWBT's false arguments in state after state. All the while, SBC gains an additional monopoly toe-hold. Irreversible competition will never exist so long as SBC takes this approach to its dealings with CLECs. A CLEC should not be forced to file an antitrust lawsuit to seek compliant treatment.

2. Even if Pronto Were Not Already Unbundled, Pronto Fits Every Criteria Referenced by the FCC for Further Unbundling of Packet Switching

Not only did the FCC specify the situation in which packet switching must be unbundled, it also left open the question of further unbundling of packet switching. In paragraph 306, the FCC stated the following (starting at the fourth sentence):

In other segments of the market, namely, residential and small business, we conclude that competitors may be impaired in their ability to offer service without access to incumbent LEC facilities due, in part, to the cost and delay of obtaining collocation in every central office where the requesting carrier provides service using unbundled loops. We conclude, however, that given the nascent nature of the advanced services marketplace, we will not order unbundling of the packet switching functionality as a general matter [i.e. in addition to the limited circumstances discussed in paragraph 313.] (Bracketed portion added.)

Clearly, Pronto falls within the circumstances describing already unbundled broadband offerings contained in Paragraph 313 of the *UNE Remand Order*. Pronto also falls within each factor discussed by this Commission for further unbundling, demonstrating that Pronto broadband offerings are properly unbundled pursuant to the “impair” analysis. First, the Commission raised a concern that competitors may not be able to reasonably compete for residential and small business customers if packet switching is not unbundled. Project Pronto’s architecture, as deployed by SBC, is predominantly designed to serve the residential market.²¹ Second in priority to the residential market is the small business market. Consequently, the Pronto packet switching network element is targeted to the customer classes for which the FCC held out its greatest concern. Second, the FCC’s concerns were based on the comparison between the less lucrative residential and small business customer classes and the CLEC’s cost to collocate in every central office where service would be provided. Pronto creates substantially greater costs than the FCC contemplated. Instead of collocating at every central office, a CLEC could be required to interconnect separately at every SAI. In certain parts of Austin, Texas, for example, there are up to 100 SAIs at a single central office. Hence, competitors based on SBC’s initial design of Project Pronto could have needed to up to 100 additional collocation installations – each to serve a small subset of the office’s potential demand.²² Even in situations where CLECs have access to cooper at the remote terminal (“RT”) that houses the NGDLC, the number of RTs per central office can exceed 20. Consequently, a CLEC would be required to collocated in or adjacent to up to 20 RTs as compared to one central office.

²¹ Unfortunately, SBC chose not to develop an offering that will be financially realistic for Tier 2 and Tier 3 cities which cannot support the extensive capacity of a DS3 or OC3c connection.

²² See also page 4 of SBC’s original Investor Briefing regarding Project Pronto which states that SBC will “place or upgrade approximately 25,000 remote terminals” creating “neighborhood broadband gateways to about 1,400 central offices throughout SBC’s 13-state territory”. Thus, using SBC’s numbers, there will on average be almost 18 RTs with next generation digital loop carriers (“NGDLCs”) per office. Working with an 18 average, a CLEC would still be looking at \$9,000,000 to construct adjacent collocations at an average central office. Moreover, the trend is to add additional RTs to existing central offices rather than new central offices.

Moreover, other unforeseen costs will be likely. SWBT, for example, seeks to charge special construction charges making CLECs pay for new copper even though existing copper could lay stranded because of SBC's decision to hardwire the existing copper to the RT (through the ECS).

Applying these facts to the FCC's discussion, it is clear that Pronto meets the cost/benefit analysis impairment test. In its *UNE Remand Order*, the FCC barely stopped short of declaring that requiring CLECs to interconnect in each ILEC central office was cost prohibitive. Nevertheless, the effect of the SBC/SWBT Project Pronto proposal is significantly more onerous than requiring CLECs to interconnect at each ILEC central office. Thus, in the case of the Project Pronto proposal, the impairment test is clearly met.²³

VII. SWBT HAS NOT DEMONSTRATED THAT IT PROVIDES LINE SPLITTING IN A MANNER THAT SUPPORTS IRREVERSIBLE COMPETITION.

IP has been a strong proponent of line splitting in a number of proceedings and forums including, but not limited to the Texas line sharing proceeding, the various SBC 271 proceedings, and the SBC 13-State Line Sharing trials. In a similar vain as SBC has done in other proceedings, SWBT over-reads the various line splitting decisions that have been issued by this Commission. As the FCC clarified in the *Texas 271 Order*, the *FCC's Line Sharing Order* was just that – “a line sharing order.” It was not a “line splitting order”. In other words, that order is neither authority for or against a line splitting requirement. That said, this Commission did discuss the on going litigation relating to line splitting in Texas and the potential need to

²³ To reiterate, this is a discussion in the alternative. This Commission already found this architecture to meet the impairment test in paragraph 313 of its *UNE Remand Order*. If the Commission were to conclude otherwise, then this discussion should demonstrate conclusively the appropriateness of this Commission unbundling the broadband “packet switching” offering.

address line sharing and line splitting in subsequent 271 proceedings.²⁴ Specifically, in the FCC's *Texas 271 Order*, the Commission stated, "In any event, the parties' entire dispute on the question of line splitting is a recent development and is subject to further negotiation and, if necessary, arbitration before the Texas Commission."²⁵ Moreover, since that FCC order was issued, the Texas arbitrators have ordered line splitting by finding not only that splitters should be considered part of the loop but that it is discriminatory to voice providers for incumbent LECs to refuse to facilitate the separation of the high frequency portion of the loop ("HFPL") when a different voice provider is serving a customer. Regarding Oklahoma, SWBT's 271 recommendation from the state commission was conditioned on SWBT porting the results of the Texas line splitting arbitration to Oklahoma. Unfortunately, the same cannot currently be said for Kansas.

Beyond the policy concerns, line splitting is technically feasible. Even during the line sharing trials, the SBC implementation team admitted that line splitting was technically feasible but that it was a "policy decision" to refuse to develop a line splitting product. Second, until line splitting is ordered, there will not be irreversible competition in voice or data markets.

The affect on voice competition is addressed in the Texas arbitration award discussed above. Regarding data CLECs, to have a reasonable opportunity to compete, certain basic needs must be met. One of those key basic needs was line sharing.²⁶ Another requirement is line

²⁴ In fact, Missouri Commission Drainer noted in a Missouri 271 meeting on November 9, 2000 that FCC staff put parties on notice that the FCC staff would be looking at line sharing and line splitting issues when new 271 applications are filed. As such, SWBT cannot claim surprise on this issue.

²⁵ In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, CC Docket No. 00-65 at ¶ 329 ("Texas 271 Order").

²⁶ The FCC made a similar determination in the FCC Line Sharing Order. In that order, it found that the absence of line sharing "diminishes the ability of competitive LECs to provide certain types of advanced services to residential and small business users, delays broad facilities-based market entry, and materially limits the scope and quality of competitor service offerings." FCC Line Sharing Order at ¶ 5.

splitting. As a provider dedicated to serving residential and small commercial markets including those outside of the Tier 1 and Tier 2 cities, IP seeks the ability to serve the largest percentage of the population possible. In other words, IP has attempted to stretch its network to as many locations within its service territory as reasonably possible to have the maximum customer reach that the commercial and regulatory environments will allow. To reach beyond the Tier 1 and 2 cities and bring these services to larger segments of the public, it is critical that no customers are artificially walled-off, as a practical matter, from IP's DSL service offerings. If this Commission expects voice competition to accelerate causing the lowering of SWBT's market share in the voice markets, data CLECs, like IP, need to have a reasonable capability to provide services to potential customers who no longer receive their voice services from SWBT, whether through working arrangements with UNE-P and resale providers or otherwise. To the extent that integrated voice/data offerings are not allowed when SWBT is not providing the voice services to the customer or the procedures are inefficiently designed to effectively preclude such integrated offerings, data CLECs, particularly those that seek to push the envelop to broaden the availability of broadband services to less urbanized areas will have to reevaluate the scope of their networks. Such a result would frustrate the goals embodied in FTA § 706.

VIII. CONCLUSION

As demonstrated herein, SWBT is not in full compliance with the Section 271 requirements. That said, as IP has done throughout the state proceedings, IP stands ready to propose solutions to problems. Should this Commission return these applications to the state level for further proceedings, IP will work with the state commissions and SWBT to move past the outstanding problems that continue to exist. It is IP's hope that working together, all of the terms, conditions, and rates issues can be addressed with permanent or sufficient interim

proposals with streamlined process²⁷ so that the only remaining obstacle will be SWBT's demonstration of adequate DSL-related performance through sufficient commercial volumes or in the alternative third party monitored test volumes.

Respectfully submitted,

IP COMMUNICATIONS CORPORATION

By  _____
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November 15, 2000

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²⁷ It is important to note that SWBT attempts to bypass many steps in its quest for 271 relief in these states, most notably the existence of any material competition and a collaborative process. It is perfectly reasonable for this Commission to conclude that to the extent it is willing to work with SWBT in such a context that a finding of irreversible competition would require certain regulatory safeguards/efficiencies like those proposed by IP in its comments to counter the shortcuts sought by SWBT.

STATE OF TEXAS
COUNTY OF TRAVIS

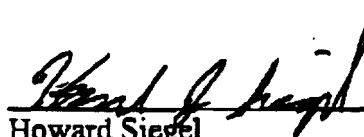
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AFFIDAVIT OF HOWARAD SIEGEL
ON BEHALF OF IP COMMUNICATIONS CORPORATION

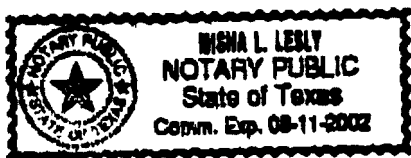
Before me, the undersigned authority, on this 14th day of November, 2000, personally appeared Howard Siegel, who, upon being duly sworn, states the following:

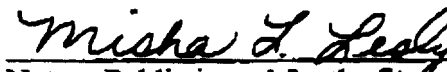
1. My name is Howard Siegel. I am over the age of 21, of sound mind, and am competent to testify as to the matters stated herein. I am the Vice President of Regulatory Policy for IP Communications Corporation ("IP"). I have personal knowledge of the facts contained herein.
2. The facts contained in these comments and related attachments are accurate. Moreover, I have personal knowledge as to this information through the due course of my duties in my capacity as IP's Vice President of Regulatory Policy.

Further Affiant sayeth not.


Howard Siegel

Sworn to and subscribed to before me this 14th day of November 2000, to certify which witness my hand and seal.




Notary Public in and for the State of Texas
My Commission expires: 8/11/02

CERTIFICATE OF SERVICE

I, Howard J. Siegel, hereby certify that I have this 15th day of November, 2000, caused a true copy of the Comments of IP Communications Corporation to be served on the parties listed below by first class mail unless otherwise noted:

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(Via Hand Delivery)

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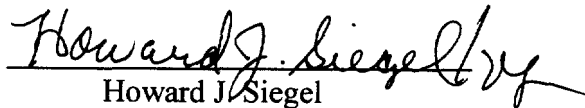
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Howard J. Siegel

Attachment 1

Wages and Salaries

[illegible]

Southern Bell Telephone Company

[illegible]

MissouriTelxMansessOldahoon UNE Pricing Comparison

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McGraw-Hill's MarketPlace Online Pricing Comparison

LINE/Description	Monthly Rate	Miscellaneous Per Year	Measuring Time Additional	Monthly Rate	Taxes Measuring Time Per	Measuring Time Additional	Monthly Rate	Rentals Measuring Time Per	Measuring Time Additional	Monthly Rate	Utilities Measuring Time Per	Measuring Time Additional	Monthly Rate	Outfitting Measuring Time Per	Measuring Time Additional	
Expendable System Change after - 1st day	None	0	602.35	None	0	371.21	5	21.75	None	0	524.37	63	None	0	617.54	63.87
System Establishment per working after - 1st day	None	5	602.35	None	0	496.82	5	58.87	None	5	520.37	63	None	5	517.58	5
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System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None	0	128.85	None	None	None	0	84.88	63	None	0	523.87	None
System Relocation per working after - 1st day	None	5	270.45	None												

Missouri/Kansas/Oklahoma UNE Pricing Comparison

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Southwestern Bell Telephone Company

[illegible]

Boulton & Woods Bell Telephone Company

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Bathurst Bell Telephone Company

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Line/Service	Monthly Rate	Miscellaneous		Taxes		Fees		On Labor Item	
		Recurring Rate First	Non-Recurring Rate Additional	Recurring Rate First	Non-Recurring Rate Additional	Monthly Rate	Monthly Rate	Recurring Rate First	Non-Recurring Rate Additional
Credit Agency, per day and per year \$	0.40	None	None	None	None				
Rent Desk, per desk and per year \$	0.265	None	None	None	None				
MP Insurance Per Day	None	None	None	None	None				
Adm Fees	None	None	None	None	None				
MP Travel	None	None	None	None	None				
Tel. Telephone	None	None	None	None	None				
OT Standard Work	None	None	None	None	None				
MD Inventory per @	None	None	None	None	None				
CD Inventory Throughput per MDU	None	None	None	None	None				
Customer Order Charge for Rec'd Services									
Miscellaneous Charge	None	\$ 8.00	None	None	None				
Standard Charge	None	\$ 5.00	None	None	None				
Standard Charge	None	\$ 5.00	None	None	None				
Charge Manual	None	\$ 5.00	None	None	None				
MD Inventory per MDU	None	\$ 12.00000 *	None	None	None				
Landed Discounted Report	\$ 8.000 - None	None	None	None	None				
Central Office Answer Charge	None	\$ 9.00 - None	None	None	None				
Predicted	None	\$ 7.00 - None	None	None	None				
Production	None	\$ 21.00 - None	None	None	None				

Missouri Teachers' Association/Union ONE Pricing Comparison

LINE	SERVICES	MAYBOW?		TOLSON		KAYSON		CMI/SONS	
		Monthly Rate	Manufacturing Rate Additional	Monthly Rate	Manufacturing Rate Additional	Monthly Rate	Manufacturing Rate Additional	Monthly Rate	Manufacturing Rate Additional
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[illegible]

Interest rate subject to First Mortgage Corporation series in TD-98-110
Based on 30/30 Mortgage and Andy
Based on Mortgage Trust rules and a 10-year term 30/30 Mortgage Indemnification
Agreement. Rate set and approved by the Mortgage P.C.
Trust Trust board rate.
Rate on 30-year fixed rate 7.5% 30/30

Attachment 2

PERFORMANCE MEASUREMENT TRACKING

September 2000

Provisioning - Unbundled Network Elements (UNE)

Kansas City, KS

Average Installation Interval - DSL				
Prior to September 2000, all Orders are classified as "No Line Sharing"				
No Line Sharing - Requires No Conditioning				
Measurement 55.1 - 01	All CLECs		Z-Value	
	No. of Orders	Avg. Interval (Days)		
Oct-99	0	n/a	1.87	
Nov-99	0	n/a		
Dec-99	0	n/a		
Jan-00	0	n/a		
Feb-00	0	n/a		
Mar-00	0	n/a		
Apr-00	3	0.00		
May-00	0	n/a		
Jun-00	1	2.00		
Jul-00	4	8.50		
Aug-00	9	7.44		
Sep-00	55	6.87		
12 Mo. Total	72	6.68		
No Line Sharing - Requires Conditioning				
Measurement 55.1 - 02	All CLECs		Z-Value	
	No. of Orders	Avg. Interval (Days)		
Oct-99	0	n/a		
Nov-99	0	n/a		
Dec-99	0	n/a		

	All CLECs	Benchmark
Oct-99	n/a	5
Nov-99	n/a	5
Dec-99	n/a	5
Jan-00	n/a	5
Feb-00	n/a	5
Mar-00	n/a	5
Apr-00	-	5
May-00	n/a	5
Jun-00	2.00	5
Jul-00	8.50	5
Aug-00	7.44	5
Sep-00	6.87	5

	All CLECs	Benchmark
Oct-99	n/a	10
Nov-99	n/a	10
Dec-99	n/a	10

Jan-00	0	n/a	
Feb-00	0	n/a	
Mar-00	0	n/a	
Apr-00	0	n/a	
May-00	0	n/a	
Jun-00	0	n/a	
Jul-00	0	n/a	
Aug-00	2	12.00	
Sep-00	15	12.53	2.53

12 Mo. Total	17	12.47	
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Line Sharing - Requires No Conditioning				
Measurement 55.1 - 03	All CLECs		SWBT/ASI	Z-Value
	No. of Orders	Avg. Interval (Days)	Avg. Interval (Days)	
Sep-00	0	n/a	3.86	n/a
12 Mo. Total	0	n/a	3.86	

Jan-00	n/a	10
Feb-00	n/a	10
Mar-00	n/a	10
Apr-00	n/a	10
May-00	n/a	10
Jun-00	n/a	10
Jul-00	n/a	10
Aug-00	12.00	10
Sep-00	12.53	10

	SWBT	All CLECs
Sep-00	3.86	n/a